

1 NICOLA T. HANNA
United States Attorney
2 LAWRENCE S. MIDDLETON
Assistant United States Attorney
3 Chief, Criminal Division
JEFFREY M. CHEMERINSKY (Cal. Bar No. 270756)
4 Assistant United States Attorney
Violent & Organized Crime Section
5 1300 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-6520
7 Facsimile: (213) 894-0141
E-mail: jeffrey.chemerinsky@usdoj.gov

8 Attorneys for Applicant
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 iPhone 6 Plus, IMEI
357000060427787

No. 18-MJ-1363

13 GOVERNMENT'S EX PARTE APPLICATION
14 FOR FIRST EXTENSION OF TIME WITHIN
15 WHICH TO RETAIN AND SEARCH DIGITAL
16 DEVICE; DECLARATION OF JEFFREY M.
17 CHEMERINSKY

(UNDER SEAL)

18 The United States of America, by and through its counsel of
19 record, Assistant United States Attorney Jeffrey M. Chemerinsky,
20 hereby applies for an order extending by 120 days the time within
21 which the government may retain and search a digital device seized
22 pursuant to a federal search warrant.

23 //

24 //

25 //

26 //

27

28

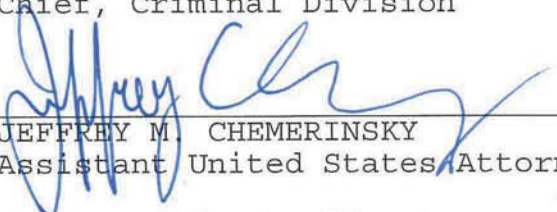
1 This application is based on the attached declaration of Jeffrey
2 M. Chemerinsky and the files and records of this case, including the
3 underlying search warrant and affidavit in support thereof.

4 Dated: September 13, 2018

Respectfully submitted,

5 NICOLA T. HANNA
United States Attorney

6 LAWRENCE S. MIDDLETON
7 Assistant United States Attorney
Chief, Criminal Division

8
9 
10 JEFFREY M. CHEMERINSKY
Assistant United States Attorney

11 Attorneys for Applicant
12 UNITED STATES OF AMERICA
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF JEFFREY M. CHEMERINSKY

I, Jeffrey M. Chemerinsky, hereby declare and state:

1. I am an Assistant United States Attorney assigned to this investigation for United States Attorney's Office for the Central District of California.

2. This declaration is made in support of a request for an order permitting the government to retain and search, pursuant to the terms of the original warrant in this matter, for an additional 120 days, the following digital device seized pursuant to the warrant described below:

a. iPhone 6 Plus, IMEI 357000060427787 (the "SUBJECT DIGITAL DEVICE").

3. On May 29, 2018, Special Agent Travis L. Pforr of the Federal Bureau of Investigation obtained a federal search warrant issued by the Honorable Frederick Mumm, United States Magistrate Judge, authorizing the search of the SUBJECT DIGITAL DEVICE.¹ This device was seized from Erwin Melgar on May 17, 2017, pursuant to a federal search warrant. The warrant issued by Judge Mumm, on May 29, 2018, which is incorporated herein by reference, authorized the search of the SUBJECT DIGITAL DEVICE for a period of 120 days to allow the government to search the SUBJECT DIGITAL DEVICE for evidence of violations of 18 U.S.C. §§ 1962(c) and (d).

4. On May 30, 2018, SA Pforr executed the warrant and attempted to extract the contents of the SUBJECT DIGITAL DEVICE, but was unsuccessful.

¹ The federal search warrant approved by Judge Mumm authorized the search of a second device. The search of that device is complete.

1 5. This is the first request for an extension. The current
2 deadline by which the government must complete its review of the
3 SUBJECT DIGITAL DEVICE is September 26, 2018.

4 6. Based on information provided to me by agents assigned to
5 this matter, as mentioned above, I understand that SA Pforr attempted
6 to extract the contents of the "SUBJECT DIGITAL DEVICE", because the
7 SUBJECT DIGITAL DEVICE was password protected, encrypted, and had a
8 broken screen. On July 3, 2018, the SUBJECT DIGITAL DEVICE was
9 provided to the Orange County Region Computer Forensic Lab ("OCRCFL")
10 for further analysis. However, OCRCFL was unable to unlock the
11 SUBJECT DIGITAL DEVICE. On July 12, 2018, the SUBJECT DIGITAL DEVICE
12 was sent to FBI Headquarters for examination. The unit at FBI
13 Headquarters had a backlog of other devices in their queue and were
14 unable to work on the device in the given amount of time.

15 7. For the following reasons, the government is requesting an
16 additional 120 days to complete its review of the SUBJECT DIGITAL
17 DEVICE:

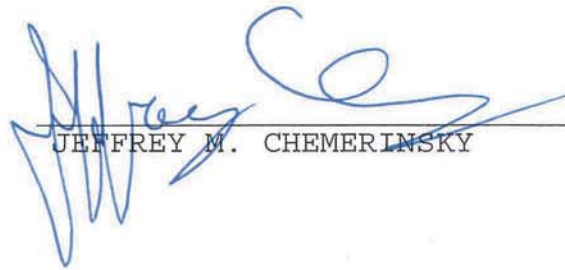
18 a. The forensic review of digital devices is time
19 consuming. Agents cannot simply turn on computers and review their
20 contents because merely turning on a computer and reviewing its
21 contents changes the data on the computer. Specialized computer
22 software is therefore needed to ensure that evidence remains in a
23 pristine and usable condition, and is not affected by the review
24 process. The review also must be conducted by agents who have
25 received specialized training to ensure that the review is done
26 thoroughly and in a forensically sound fashion. This process takes
27 substantial time.

28 //

1 b. As set forth above, the SUBJECT DIGITAL DEVICE was
2 password protected, encrypted, and had a broken screen. OCRFL was
3 unable to unlock the SUBJECT DIGITAL DEVICE. Thus, the SUBJECT
4 DIGITAL DEVICE was sent to FBI headquarters, where it is currently
5 awaiting examination.

6 I declare under penalty of perjury under the laws of the United
7 States of America that the foregoing is true and correct.

8 DATED: September 13, 2018

9
10 
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28